

MORGANTOWN BOARD OF ZONING APPEALS MINUTES

March 21, 2007

6:30P.M.

City Council Chambers

Members Present: Bernie Bossio, Nick Iannone, Mark Furfari, Jim Rockis, and Jim Shaffer

Members Absent: None

Staff Present: Christopher Fletcher, Planning Director.

MATTERS OF BUSINESS:

- A. Motion to approve the January 17, 2007 minutes by Shaffer, second by Furfari. Motion carried unanimously.
- B. Motion to approve the February 21, 2007 minutes by Rockis, second by Furfari. Motion carried unanimously.

Motion by Rockis to amend the agenda to consider item CU07-05/Lytle /126 Prairie Avenue first, second by Iannone. Motion carried unanimously.

- A. CU07-05 / Lytle / 126 Prairie Avenue:** Request by Ron Lytle for conditional use approval for a two-family dwelling in the B-4, General Business District. Tax Map #28 Parcel #108; a B-4, General Business District.

Fletcher read the staff report and gave an over view of the proposal.

Ron Lytle, 1165 Hampton Avenue, explained his proposal stating that this is a residential area in a B-4 district. He is continuing the process started by the previous owner for the property.

[Bossio N. Iannone](#) asked for public comment, there being none the public portion was closed.

Fletcher read the staff recommendation. He stated that it is the opinion of the Planning Department ~~that hat~~ the preferred residential use in the B-4 District is either mixed-use or over-store dwelling types. The objective of this land use pattern is to maintain and preserve a non-residential or commercial presence at street level. Although the proposal is in a B-4 District, the neighborhood it is located in is quite different from the central downtown business core. He continued that it is the opinion of the Planning Department that a business use in this structure would be inappropriate and historically inaccurate.

Fletcher stated that the Board of Zoning Appeals must determine whether the proposed request meets the standard criteria for a conditional use bay reaching a positive determination for each of the “Findings of Fact” submitted by the applicant.

M. Fletcher stated that staff concurs with each of the findings of fact as submitted by the applicant for Findings of Fact #1 thru #7. Staff recommends an addition to finding for #8 that the structure will remain residential.

Findings of Facts:

1. Question - Congestion in the streets is not increased, in that:
Answer – “The existing three-bedroom house will be converted into one 1 bedroom unit and one 2-bedroom unit. There will be no increase in tenants.”
Move to accept by Shaffer, second by Iannone, Motion carried unanimously.
2. Question – Safety from fire, panic, and other danger is not jeopardized, in that:
Answer – The petitioner is improving the structure by completely rewiring the structure and providing new fire escapes where none existed.
Move to accept by Shaffer, second by Furfari. Motion carried unanimously.
3. Question – Provision of adequate light and air is not disturbed, in that:
Answer- The building is an existing two-story structure and no new exterior work is proposed.
Move to accept by Furfari, second by Shaffer. Motion carried unanimously.
4. Question – Overcrowding of land does not result, in that:
Answer - There are no additional tenants proposed and the only structural modifications proposed are interior separation walls between the units. The structure will remain as is on the exterior.
Parking for the property was questioned by a board member.
Mr. Lytle stated it will be created behind the house, approximately two spaces.
Motion to accept by Furfari, second by Rockis. Motion carried unanimously.

5. Question - Granting this request will not create inadequate provision of transportation, water, sewage, schools, parks, or other public requirements, in that:

Answer - There are no additional tenants proposed, just separated space in an existing structure.

Move to accept by Shaffer, second by Iannone. Motion carried unanimously.

6. Question – Granting this request will not create inadequate provision of transportation, water, sewage, schools, parks, or other public requirements, in that:

Answer - The proposed project will only result in a duplex with no additional tenants, restaurant, preserving and enhancing historic relevance of the building.

Motion to accept by Shaffer, second by Rockis. Motion carried unanimously.

7. Question – Value of buildings will be conserved, in that:

Answer – The value of the structure will increase due to renovations.

Motion to accept by Furfari, second by Iannone. Motion carried unanimously.

8. Question - The most appropriate use of land is encouraged, in that:

Answer – The structure will remain residential.

Motion to accept by Rockis, second by Furfari. Motion carried unanimously.

Shaffer moved to grant the conditional use of a two-family dwelling in the B-4 District requested by the petitioner with the following staff recommended conditions:

- That the applicant must submit, to the satisfaction of the Planning Director and City Engineer, a solid waste storage and removal plan prior to building permit issuance.
- That the applicant must improve vehicular access to the satisfaction of the City Engineer.

Iannone seconded. Motion carried unanimously.

Chair Bossio addressed the issue of applications being brought to the board that are not legible or to scale and stated that future applications must meet the criteria set forth or they will be tabled or rejected.

OLD BUSINESS:

- A. CU07-03 / Wubbie Development Group / 211 Willey Street:** Request by Wubbie Development Group, LLC for conditional use approval for a “Multi-family Dwelling” use in the B-4 District at 211 Willey Street. Tax Map #26 Parcel #119; a B-4, General Business District.

At the February meeting, the Board voted to table the petitioner's conditional use request so that additional information could be presented by Terri Cutright, Mainstreet Morgantown, in regards to the City's land use regulation objectives related to preserving commercial space at ground level within the B-4 District. Ms. Cutright was present to answer the Board's questions.

The Board raised questions concerning a development project that was approved on the adjoining property, west of the old Masonic Lodge building, and any potential incompatibilities that may arise with a zero lot line development. In respect to the concerns, the developer has modified the interior layout so that windows serving the proposed units would be located on the east façade only, facing the small alley. It does not appear to adversely impact the adjoining property development or the ability to provide adequate lighting, ventilation, etc. for their proposed dwelling units within the proposed project.

Pursuant to the attached letter from Mr. Robert Shuman, the petitioner is withdrawing its conditional use application at this time. The developer plans to provide commercial laundry space on the lowest level of the building.

The lowest level of the subject building is considered the ground floor and not the basement because, by definition, more than one-half of the floor's height is above the average level of the adjoining ground. As such, the area and location of the commercial laundry space will change the originally contemplated conditional "multi-family" use of the building to "mixed-use dwellings" and "Laundromat," which are permitted uses in the B-4 District. Access to the commercial laundry area will be provided through an entrance along the private alley between the Masonic Lodge and the adjoining law office. Access to dwelling units on the ground floor that are behind the commercial laundry space will be provided at the rear of the building.

It is the opinion of the Planning Department that the concerns raised by the Board at the February meeting have been adequately addressed by the developer. As such, no further action by the Board of Zoning Appeals is required or recommended.

Motion to take off table by Rockis, second by Shaffer. Motion carried unanimously.

Terri Cutright, Mainstreet Morgantown, addressed the board with her information as a downtown professional. Ms. Cutright has looked at this project from conception under the rehabilitation historical tax credit opportunity. She would support the conditional use based on the following: 1) That the structure was not built for commercial use. It is her opinion there was never any liable commercial use other than a possible service use to the residents of the building. 2) Changes to incorporate commercial use in the building will alter the historic

integrity of the building because the historic integrity is important to the streetscape. 3) The Board should always ask “was this building built for commercial use?” And in her opinion, this building was not. 4) Another question is will conditional use approval provide a pedestrian barrier? This meaning, people will walk across the street to avoid the building.

The adjoining property developers are also available for discussion.

Shaffer thanked Ms. Cutright for her input and information.

Rockis asked if Ms. Cutright believes the building was built for residential use.

Ms. Cutright stated that although she did not believe it was built for residential use, it would be the best use for the building.

Shaffer asked for clarification with the zero lot line.

Fletcher stated that he spoke with the property owners regarding the building and fire codes. The development group redesigned the buildings windows to replace the need for an alley and that this project will be handled internally.

Shaffer discussed the issues of dealing with structures on a case by case basis after hearing Ms. Cutright’s information.

NEW BUSINESS:

A. V07-09 / Hardesty / 546 Burroughs Street: – Request by David C. Hardesty, Jr. and Susan B. Hardesty for variance approval from Appendix A: Development Standards Table at 546 Burroughs Street. Tax Map #55 part of old Parcel #65; an R-1, Single-Family Residential District.

Chair Bossio advised he would be abstaining from discussion and vote as the subject property was previously his personal residence. Vice-Chair Iannone presided over this portion of the meeting.

Fletcher read the background and analysis of the request that states the applicant seeks to construct a 15ft. X 15ft. addition (sunroom) onto the rear of the existing structure. The rear setback for the proposed addition is five (5) feet. He continued that the minimum rear setback requirement in the R-1 District is 25 feet. As such, the petitioner must obtain a 20- foot variance to permit the proposed 5-foot rear setback. The proposed improvement project meets all remaining applicable design and performance standards.

David Hardesty, 948 Riverview Drive, was present. He thanked the Board for hearing his request. Mr. Hardesty advised the Board that he and Mr. Bossio met through a third party realtor and have had no contact prior to the decision of purchasing the house. He stated that he would like to create a home office

sunroom and believes that the addition would add value to their home, as well as the neighbors. He continued that there are four homes in the area of which all of the neighbors are in favor of the variance.

Fletcher read the names of neighbors that submitted letter of support, the include: Robert and Daphne Schreiber, 544 Burroughs Street; Rob and Laura Morgano, 450 Cypress Street; William and Marie Graham, 532 Burroughs Street; and Paul and Kathleen Speaker, 548 Burroughs Street.

N. Iannone asked for public comment. There being none, the public portion was closed.

Fletcher read the staff recommendation. He stated that the Board must determine whether the proposed request meets the standard criteria for a variance by reaching a positive determination for *each* of the “Findings of Fact” submitted by the applicant. He continued that staff recommends approval of the variance as requested with the following addition to the first finding of fact:

- The location of the proposed addition is most appropriately situated because the project will enclose an existing patio area that currently enjoys privacy landscaped screening. Further, the location of the proposed 15’ X 15’ addition will enjoy a greater setback from the rear parcel line (functional side) than it would from the side parcel line (functional rear).

Shaffer moved to accept the findings of fact as submitted by the petitioner and with staff recommendation. Rockis seconded. The motion carried unanimously.

Shaffer moved to grant a rear yard setback variance of twenty feet (20’) as requested by the petitioner. Rockis seconded. The motion carried unanimously.

B. CU07-04 / Novichenks Too, LLC / 2045 Listravia Avenue: Request by Novichenks Too, LLC for conditional use approval for private club license in the B-2 District at 2045 Listravia Avenue. Tax Map #44 Parcel #91; a B-2, General Business District.

Fletcher gave background and analysis of a proposal by Mr. Dennis Johnson to obtain a “Private Club” use approval for Novichenks Too, located in the former Jackie’s Place at 2045 Listravia Avenue. The previous “tavern” use had been existence for approximately 60 years.

Fletcher continued that “Restaurant, Private Wine” and “Tavern” uses are permitted by right in the B-2 District and that because Mr. Johnson seeks to sell liquor in addition to beer and wine, the use is considered a “Private Club,” thereby requiring conditional use approval as per Table 1331.05.01 “Permitted Land Use” of the Planning & Zoning Code.

The petitioner has submitted a proposed menu, business description, and interior layout that characterize the establishment. Mr. Johnson is also the proprietor of Novichenks located in the Cheat Lake area.

Robert Brand, 120 Hummingbird Lane, partner in Novichenks Too, LLC, stated that the tavern was purchased in February with the intent to operate in the same manner as previously, improvements will not change the seating, and that renovations will update the inside to include the bathrooms and food preparation areas. Mr. Johnson will operate the business with six years experience at the Cheat Lake location and twenty-five years local business establishment observation.

Kathleen Musick, 142 Lincova Avenue, stated that the establishment has been a family business for years. She had questions concerning the clientele that will come with the liquor license. She continued to state that there have been no problems at that location. Since the bar has been closed, they have realized the issues with the parking. Ms. Musick listed other concerns with the location being close to a church, a school that passes the location, and children waiting there for the school bus. Ms. Musick stated she did not see this as a positive for the community. It will be inviting strangers into the community and she is concerned with the value of her property. Ms. Musick also inquired about a gentlemen's club being permitted in this location.

David Musick, 2053 Eugeniva Avenue, stated he is within 200 feet of the property. He is also concerned about the property value. Mr. Musick stated that the Hotspot already stands out, and he understands this location will also have machines. He also stated that there are issues with parking in the area and that the overflow parks in the residential areas. The evening activities at Trinity School will also be affected. He believes there will be construction in the area and looks at this as another hotspot. Mr. Musick asked about signage for the business. He is trying to protect what goes in as new business to keep a positive light on Sabraton.

Robert Musick, 145 Lincova Avenue, agreed with his brother and sister. He stated that when the school was built, there were questions regarding traffic and congestion and that Listravia has parking on one side of the street. He continued that the side streets are used when additional parking is needed and this creates an issue for the residents.

Bossio clarified the machines as video poker machines, and that they already existed at Jackie's and that the liquor license will not affect the machines.

Mr. Musick stated that he has concerns that a new business of this type will draw more traffic than the old one and there is not any room.

Elizabeth Neely, 160 Poplar Drive, and the Chairman of the Board at Trinity Christian School, wanted to discuss the parking issue. She stated that the school purchased the lot across from Jackie's to make that a parking lot for facilities along Listravia. Her concern is that the parking lot they are providing for the neighborhood will become the parking lot for the private club. The lot will accommodate approximately fifteen cars.

Mr. Brandt stated there is no intention for a gentlemen's club and that it is a long time business they want to refurbish and continue to operate. He stated that parking across the street will handle twelve cars and the garage area behind the bar could be removed to provide 10-12 additional parking spaces. The question of property values based on the business should not be different because the business has been there and they are looking to increase the value of the business. He affirmed that when the bar closed, it was celebrated as a neighborhood icon and they want to keep that same feel without dramatic changes.

Mr. Brandt was asked about his experience operating other bars and expected operating hours. Mr. Brandt advised he and Mr. Johnson have operated the Cheat Lake location jointly. The hours would be midnight through the week and approximately a 2:00 am on Friday and Saturday and the crowd would be 21 and up only. The signage would consist of a sign post in the front, no lighted or neon signs.

Fletcher advised signage has not been discussed due to the need for approval.

Furfari asked about the estimated capacity.

Mr. Brandt stated approximately 48 patrons.

Bossio asked what asset liquor would provide to the location.

Mr. Brandt stated it would allow for a drink menu expansion along with the food menu expansion. Most sports bars offer liquor, beer and wine. It will be a bar and grill with waiter/waitresses and food service.

Mr. Brandt was asked about the frequency of live entertainment and advised it would be on a Friday happy hour type basis.

Bossio asked if turned down, would the property still move forward.

Mr. Brandt stated he was unsure, it would need to be reconsidered. He was advised in February, when he attempted to obtain a liquor license that it would need to come to the Board.

Fletcher stated that an adult entertainment establishment was only permitted in Industrial.

Bossio clarified with Fletcher that if denied a liquor license, what would be the duration of the video lottery license. Fletcher stated the he believed that there was a 12 month waiting period.

Rockis asked why this was zoned B-2, if it is setting in a residential.

Fletcher stated his understanding it has always been a B-2.

Fletcher stated the parking will not change because the business will not change.

Shaffer asked if parking could be addressed at this time, based on the current requirements.

Fletcher stated that would require approximately 15 spaces pending employees.

The Board members discussed other areas in B-2.

Fletcher stated that B-1 was not formally a neighborhood business. It was established more like the current B-2.

Iannone asked if the Trinity lot could be permit parking.

Shaffer stated he is thinking of not approving and reapply in a year, this will allow the board to look at the relationship to the neighborhood.

Bossio asked for public comment. There being none, the public portion was closed.

Fletcher read staff recommendation. He stated that the Board of Zoning Appeals must determine whether the proposed request meets the standard criteria for a conditional use by reaching a positive determination for *each* of the "Findings of Fact" submitted by the applicant.

Findings of Facts

1. Question - Congestion in the streets is not increased, in that
Answer – Existing business over 40 years, not adding on to the footprint of building.
Furfari asked if parking could be provided. Mr. Brandt stated the garage behind the bar could be removed for parking.
Furfari stated that if this is based on adequate parking. Bossio added that not just the parking will be an issue. Parking is the issue brought up by the neighborhood. Bossio stated the parking is 1 per 100 sqft. There is 1500 sqft. The garage is approximately 1800 sqft.

Fletcher recommends a site visit to discuss all issues with parking.
Bossio clarified there were three bedrooms upstairs.
No alternate affirmative or negative motion was made.

2. Question – Safety from fire, panic, and other danger is to jeopardize, in that:

Answer – The existing use has been in place for approximately 60 years. All interior and exterior construction must conform to current building and fire codes.

Motion to accept by Iannone.

Motion withdrawn

Move to accept by Iannone, second by Rockis. Motion carried unanimously.

3. Question – Provision of adequate light and air is not disturbed, in that:

Answer – There are no changes proposed to the structure that would reduce existing provisions of adequate light and air.

Move to accept by Iannone, second by Furfari. Motion carried unanimously.

4. Question – Overcrowding of land does not result, in that:

Answer – There are no changes proposed to the existing footprint of the building.

Move to accept by Iannone, second by Rockis. Motion carried unanimously.

5. Question – Undue congestion of population is not created, in that:

Answer – There are no changes proposed to the existing footprint of the building or increase in the scale and scope of the previous tavern use.

- Motion by Shaffer to find in the negative by rejecting the finding presented by the petitioner. Second by Rockis. The motion failed on a 2-3 vote. Shaffer and Bossio voted in favor of the negative motion. Iannone, Rockis, and Furfari voted in opposition of the negative motion.
- Motion by Rockis to find in the affirmative by accepted the finding presented by the petitioner. Second by Iannone. The motion failed on a 2-3 vote. Rockis and Iannone voted in favor of the affirmative motion. Bossio, Furfari, and Shaffer voted in opposition of the affirmative motion.

No alternate affirmative or negative motion was made.

6. Question – Granting this request will not create inadequate provision of transportation, water, sewage, schools, parks, or other public requirements, in that:

Answer – There are no changes proposed that would result in additional demand for public services or facilities.

Motion to accept by Rockis, second by Iannone. Motion carried unanimously.

7. Question – Value of buildings will be conserved, in that:

Answer – There are no changes proposed that would change the scale or scope of the previous tavern use.

No motion to find in the affirmative or in the negative was made.

8. Question – The most appropriate use of land is encouraged, in that:

Answer – Because the petitioner is not proposing any interior or exterior modifications to the structure that would result in a significant increase in occupancy it does not appear that the sale of liquor in addition to beer and wine will substantially alter a use that has remained a neighborhood landmark for approximately 60 years.

No motion to find in the affirmative or in the negative was made.

Motion by Shaffer to table the conditional use petition for the purpose of allowing the petitioner to submit additional information and/or modify the proposed conditional use petition to address the Board's concerns for parking and the impact of a private club on the neighborhood as they related to findings of fact #1, #5, #7, and #8, second by Rockis. Motion carried unanimously.

OTHER BUSINESS:

Public Comments: None

Comments from Staff:

Fletcher commented regarding to the quality of information of the applications. The Planning Department can not disqualify applications based on the quality, only the Board could make that determination. The department can only ensure the applications are complete.

Board members discussed issues with applications and agreement on standards.

Bossio stated that it should be a "to scale" drawing based on the code. Bossio asked for benchmarks for applications.

Fletcher suggested a letter with information be attached.

Board members suggested including items in the letter such as need a to-scale drawing, must be legible, and have example answers for questions.

ADJOURNMENT: 9:00 PM